

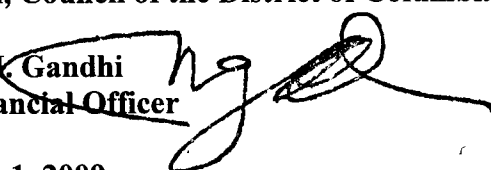
**Government of the District of Columbia  
Office of the Chief Financial Officer**



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Vincent C. Gray  
Chairman, Council of the District of Columbia

**FROM:** Natwar M. Gandhi   
Chief Financial Officer

**DATE:** December 1, 2009

**SUBJECT:** Fiscal Impact Statement (Revised) – “Department of Small and Local Business Development Amendment Act of 2009”

**REFERENCE:** Bill Number 18-332 – Amendment in the Nature of a Substitute Draft Shared with OCFO on November 23, 2009

---

*This revised fiscal impact statement reflects the changes in the proposed legislation based on the draft shared with the OCFO on November 23, 2009. This document replaces the fiscal impact statement issued by the OCFO on October 27, 2009.*

**Conclusion**

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the provisions of the proposed legislation. To implement the proposed legislation, the Department of Small and Local Business Development would incur one-time database reprogramming costs of \$4,850 in FY 2010. This amount can be absorbed by the agency's existing resources.

**Background**

The proposed legislation would amend the Small, Local, and Disadvantaged Business Enterprise Development Assistance Act of 2005 (“Act”)<sup>1</sup> to modify provisions of the legislation regarding compliance and enforcement, joint ventures equity participation requirement, and equity and development participation. Specifically, the proposed legislation would:

- Provide the Director with authority to impose fines for violations of the Act;

---

<sup>1</sup> Effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*)

- Eliminate the requirement for the Department of Small and Local Business Development ("Department") to oversee and administer compliance and enforcement responsibilities<sup>2</sup>;
- Require the D.C. Auditor to provide information and assistance to the Department to perform appeals and audits<sup>3</sup>;
- Require the Department to determine the dollar amount to be allocated toward Certified Business Enterprises (CBE) from each District agency's expendable budget;
- Require the District of Columbia Small and Local Business Opportunity Commission (Commission) to hear all requested appeals by business enterprises denied certification by the Department<sup>4</sup>;
- Provide the Commission the authority to take actions "necessary or appropriate" to carry out its responsibilities;
- Eliminate the Commission's additional responsibilities such as educating the public about the CBE Program and fostering business opportunities for CBE's<sup>5</sup>;
- Modify the Disadvantaged Business Enterprise Certification requirement to require a business to have average annualized gross receipts totaling \$75 million or less to obtain certification;
- Add a new subsection allowing a joint venture, veteran-owned, or local manufacturing businesses to qualify for certification so long as the business meets the requirements outlined in the legislation and can adequately document its status;
- Reduce the number of points awarded to Long-Time Resident Businesses in the evaluation of contract proposals from ten to five;
- Modify the performance and subcontracting requirements for non-construction contracts to require that non-construction contracts would apply to those in excess of \$250,000, unless a waiver has been approved by the Office of Contracting and Procurement;
- Require each prime contractor to provide the D.C. Auditor with an annual report including a list of each subcontractor identified in the subcontracting plan submitted to the Department, information on the price to be paid to the subcontractor, a description of goods and services contracted for, and the amount paid by the contractor to the subcontractor;
- Require Small Business Enterprises or Disadvantaged Business Enterprises to receive 20 percent in equity participation and 20 percent in development participation in all development projects supported by District funds and in all development projects that take place on District owned property. The subsection would also require a developer that is unable to meet the 20 percent CBE equity participation requirement to pay the District the outstanding cash equity amount as a fee in lieu of the unmet equity; and

---

<sup>2</sup> The proposed legislation repeals subsections (F), (G) and (H) of D.C. Official Code § 2-218.13, which requires the Department to monitor agency contracting and procurement activities, monitor third-party contracting and procurement relating to Certified Business Enterprises, and prepare the quarterly and annual reports required by D.C. Official Code § 2-218.54. The proposed legislation does not eliminate all compliance functions from the Department; specifically subparagraphs (I) and (J) of §2-218.3 were not repealed and will remain with Department. The Department, however, has stated that they can absorb with remaining functions with existing budget resources

<sup>3</sup> Current law (D.C. Official Code § 2-218.13(E)) requires the Commission to provide this information. The proposed legislation would amend current statute to require the Commission and the D.C. Auditor to provide it.

<sup>4</sup> D.C. Official Code § 2-218.22 requires the Commission to hear all requested appeals for the denial of an application for initial certification, reinstatement, or renewal.

<sup>5</sup> The proposed legislation would repeal section § 2-218.23 in its entirety.

- Require all revenue received from fees paid in lieu of unmet equity to be used to pay vocational training and grants and loans to small businesses. The Deputy Mayor for Planning and Economic Development would be required to administer and manage the grant program for vocational training and small business loans. All administrative costs associated with the implementation of the program would be reimbursed through revenue collected from the fees.

Current law requires the Mayor to establish procedures to ensure that solicitations are subdivided and unbundled and that small contracts are created to the extent feasible and fiscally prudent. The proposed subtitle would amend current statute<sup>6</sup> to prohibit, as of the effective date of the proposed legislation, the Office of Contracting and Procurement (OCP) from issuing any new contracts for more than \$100,000 until the Mayor has submitted the proposed procedures by resolution.<sup>7</sup> If the Council does not approve or disapprove the resolution within 45 days, the proposed resolution would be deemed approved.

### **Financial Impact**

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the provisions of the proposed legislation. The implementation of the proposed legislation would require a one-time database reprogramming cost of \$4,850 in FY 2010 that would be incurred by DSLBD. DSLBD would need to reprogram its database to add the two new categories of veteran-owned and local manufacturing businesses enterprises, and change the point allocation for Long-time Resident Businesses. The OCFO, in consultation with the Agency Fiscal Officer determined that this cost can be absorbed within agency's existing resources.

The D.C. Auditor would be able to absorb the cost of implementing requirements of the proposed legislation with their existing budget. As part of the FY 2010 budget and financial plan, the D.C. Auditor's personal services budget was increased by 4 FTEs, which is adequate to implement the additional responsibilities in the proposed legislation.

The potential prohibition of OCP from issuing contracts of more than \$100,000 could delay the District's ability to obtain necessary goods and services in a timely manner, impacting the delivering of public services; however, if proposed procedures are submitted by the Mayor to the Council for approval and the proposed rules are approved within the 45 day approval period, the provision would not have a significant impact on District's contracting and procurement process.

Finally, the proposed legislation could have a positive but unknown fiscal impact as a result of revenue collected from developers who choose to pay fees in lieu of meeting the CBE equity requirements. It is not possible to estimate the amount of revenue that would be collected, as this is a new requirement and there is no baseline data available yet on developer compliance with this requirement.

---

<sup>6</sup> Section 2347 of the Small, Local, and Disadvantaged Business Enterprise Development Assistance Act of 2005.

<sup>7</sup> The proposed resolution must be submitted to the Council for a 45-day review period.